

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE  
Civ. No. B. 025920  
(Super. Ct. No. C420153)

---

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Plaintiff-Appellant,

and

MARY SUE HUBBARD,

Intervenor-Plaintiff-Appellant,

-against-

GERALD ARMSTRONG,

Defendant-Respondent.

---

APPELLANTS' OPPOSITION TO RESPONDENT'S  
PETITION FOR AN EXTENSION OF TIME  
TO FILE RESPONSIVE BRIEF

---

Respondent Gerald Armstrong has sought leave for permission to file a brief herein, and for an extension of 90 days in which to file such a brief. Appellants have had no objection to Mr. Armstrong filing a brief in this matter, and, indeed, have communicated that fact to Mr. Armstrong's counsel of record herein. Appellants do object to Mr. Armstrong's dilatory tactics in not filing a brief on time, apparently dismissing his counsel of record while the appeal is pending, and then seeking a further delay of 90 days in which to file a brief.

Mr. Armstrong makes reference to a document entitled "Mutual Release of all Claims and Settlement Agreement", which settled the plaintiffs' claims for return of documents and injunctive relief and Mr. Armstrong's cross-claim for damages, but left unsettled the plaintiffs' claims for nominal damages for intrusion on privacy, conversion and breach of confidence. Mr. Armstrong claims that a provision of that agreement prohibits him from responding to appellants' brief in this case. Mr. Armstrong's position is incorrect.

At the time the Settlement Agreement was entered into, this case had been fully briefed and argued and was awaiting decision by this Court. All parties to this case contemplated that this Court would render a decision on the merits of the appeal. In the Settlement Agreement, Mr. Armstrong waived the right to take any further appeals from the decision of this Court in the event this Court reversed the judgment of the Superior Court. Mr. Armstrong further agreed not to file any new briefs if the Church should take an appeal to the California Supreme Court. In such an event, of course, Mr. Armstrong's previously filed briefs in this Court would have been considered by the California Supreme Court. See California Rules on Appeal, Rule 29.3.

At the time of the settlement agreement, no party contemplated that this Court would dismiss the Church's prior appeal for lack of appellate jurisdiction,<sup>1/</sup> thereby requiring the Church to renotice and reperfect its appeal. Indeed after renoticing this appeal, the Church filed a motion to have the appeal decided on the basis of the prior briefs and oral argument, which motion was denied by this Court on April 22, 1987. There then was a delay of over two years until this Court established a briefing schedule for the new appeal. Appellants filed their brief on this new appeal on December 18, 1989, which brief largely incorporated from appellants' prior brief the substantive arguments still at issue in this case.

Both before and after filing appellants' brief on this appeal, appellant's counsel communicated by telephone and letter with Michael Tabb, Esq. of the firm of Flynn, Sheridan & Tabb, who are counsel of record for Mr. Armstrong. Counsel for appellants and Mr. Tabb were in agreement that Mr. Armstrong could and would respond to appellants' brief herein, most likely by filing a motion to incorporate relevant sections of the brief previously filed by Mr. Armstrong in the Church's earlier appeal, which had been dismissed. Counsel for appellants even went so far as to identify for Mr. Tabb, for his review and consideration, those sections and pages of Mr. Armstrong's previous brief which remained relevant to the present appeal.

---

<sup>1/</sup> An issue which had neither been briefed nor raised at oral argument.

After the time had passed for Mr. Armstrong to file either a brief or a motion incorporating his prior brief, undersigned counsel for appellants telephoned Mr. Tabb on several occasions to determine why Mr. Armstrong had not responded to appellants brief. After several conversations Mr. Tabb informed undersigned counsel that Mr. Armstrong had fired Flynn, Sheridan & Tabb and would be proceeding with new counsel. Undersigned counsel inquired as to the identity of new counsel, so that he could contact new counsel to determine whether and when a brief or motion would be filed by Mr. Armstrong. Mr. Tabb replied that he did not know the identity of new counsel.

Therefore it is absurd for Mr. Armstrong to now claim that he needed leave of court to file a brief or to adopt his prior brief, since it was clear from the discussions between opposing counsel that counsel for appellants recognized that Mr. Armstrong would file, and had no objection to such filing. Rather, it would appear that Mr. Armstrong is attempting to divert the Court from proceeding with the present appeal, and to seek an unconscionable delay in filing a brief on the merits.

On February 22 this Court issued a notice "that if [Respondent's] brief is not on file within 30 days after the date of this notice, or good cause shown for relief from default, the appeal would be submitted for decision upon the record on the appellants' opening brief." Mr. Armstrong has not shown good cause for any further extension of time. His brief, or motion to incorporate relevant sections of his prior brief,



therefore should be ordered to be filed by no later than March 24, 1990.

Respectfully submitted,



ERIC M. LIEBERMAN  
RABINOWITZ, BOUDIN, STANDARD,  
KRINSKY & LIEBERMAN  
740 Broadway, Fifth Floor  
New York, New York 10003-9518  
(212) 254-0111

Counsel for Appellants

MICHAEL LEE HERTZBERG  
740 Broadway, Fifth Floor  
New York, New York 10003-9518  
(212) 982-9870

Counsel for Appellant  
Mary Sue Hubbard


Dated: March 6, 1990

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF NEW YORK)

CLERK OF THE SUPERIOR COURT  
111 North Hill Street  
Los Angeles, California 90012

GERALD ARMSTRONG  
6838 Charing Cross Road  
Berkeley, California 94705

Simone Leak  
SIMONE LEAK

  
 \_\_\_\_\_  
 NOTARY PUBLIC  
**TERRY GROSS**  
 Notary Public, State of New York  
 No. 31-4942893  
 Qualified in New York County  
 Commission Expires October 11, 1910

PROOF OF SERVICE BY MAIL

I am a resident of Los Angeles County, am over the age of eighteen, and not a party to the herein address. My business address is P.O. Box 511, Pacific Palisades, California 90272.

On March 6, 1990, I served the within letter to Second District Court of Appeals on the parties by placing a copy of the same in a sealed envelope with postage thereon and placed the same in the United States mail at Pacific Palisades address as follows:

Court of Appeal of the State of California  
Second Appellate District  
Division Four (and three)  
3580 Wilshire Boulevard, Room 301  
Los Angeles CA 90010

Mr. Kendrick Moxon  
Mr. Timothy Bowles  
6255 Sunset Boulevard  
Suite 2000  
Los Angeles CA 90028

Eric M. Lieberman  
Rabinowitz, Boudin Standard  
Krinsky & Lieberman, P.C.  
740 Broadway, Fifth Floor  
New York NY 10003-9518

Superior Court  
111 N. Hill Street  
Los Angeles CA 90012

Michael Flynn  
Flynn Sheridan & Tabb  
One Boston Place 26th Floor  
Boston MA 02108

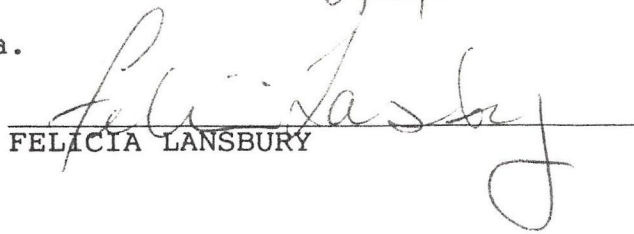
Mr. Gerald Armstrong  
6838 Charing Cross Road  
Berkeley CA 94705

Michael L. Hertzberg Esq.  
740 Broadway, 5th Floor  
New York, NY 10003-9518

Toby Plevin, Esq.  
6360 Wilshire Boulevard  
Suite 1600  
Los Angeles CA 90048

Julia Dragojevic, Esq.  
Contos & Bunch  
5855 Topanga Canyon Blvd.  
# 400  
Woodland Hills CA 91367

I declare that the above is true under the penalty of perjury. Executed on 3/6/90, at Pacific Palisades, California.

  
FELICIA LANSBURY